

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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In the Matter of the Application
of

GEORGE SASSOWER,

Petitioner,

-against-

Index No.
10276-1977.

Special Term Part I
June 13, 1977.

THE STATE OF NEW YORK and Hon. ERNEST
L. SIGMORELLI, Surrogate of Suffolk
County,

Respondents.

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STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF NEW YORK)

GEORGE SASSOWER, first being duly sworn, deposes,
and says:

This affidavit is made with respect to the Order to
Show Cause dated June 6, 1977 and made returnable on June 13th,
1977 and with respect to the affidavit of LEONARD J. PUGATCH,
Esq., Assistant Attorney General on behalf of the respondents,
dated June 10, 1977.

1. This proceeding was prepared with the intention to
place the venue in Nassau County and not Suffolk County as
authorized by § 506(a)(b) CPLR.

The aforementioned statute specifically states that
this proceeding may be commenced "in any county within the

judicial district where the respondent made the determination complained of".

The choice as to the county for this proceeding was with the petitioner and your deponent respectfully submits that the Court did not have the power to change the venue from Nassau County to Suffolk County merely because the petitioner commenced this proceeding by Order to Show Cause rather than by Notice of Petition.

Petitioner respectfully requests that this proceeding be transferred to Nassau County for determination if this Court finds that petitioner's position has merit in this respect.

2. With respect to the "Third Cause of Action" the Order of March 9th, 1976 provides, as stated by LEONARD J. PUGATCH, Esq., that "petitioner was conditionally removed as executor of the estate unless he filed ...within thirty days."

The Order of March 9th, 1976 provides that petitioner "file ... within thirty days from personal service ..."

Since your petitioner did in fact file "within thirty days from personal service" the Order became moot and there was nothing to appeal.

It is not specifically controverted by the respondents that during the period of March 9, 1976 until March 25th, 1977 (more than one year later), the petitioner performed "many acts as such executor with the express knowledge, consent, request, and/or direction of the respondent ERNEST L. SIGNORELLI, the

law assistants, and all the attorneys representing the parties interested in such estate..."

If there is any dispute about the aforementioned fact (or any other essential fact) adverse to the petitioner, a hearing is respectfully requested.

The respondent does not have the power to change a decision more than a year later (Herpe v. Herpe, 225 N.Y. 323, 327; Baum v. Baum, 40 A.D.2d 1000, 1001-2d Dept), particularly when the parties acted in reliance on the Order of the Court.

Significantly the respondent did not even have the power to remove the petitioner under the Order of March 9, 1976 since the application was made by one legatee without notice to anyone else interested in the estate except the petitioner.

In 2 Warren-Heaton's on Surrogates' Court § 132 ¶ 2, p. 20-176-177, the statement is made:

" It needs no argument or authority to show that all persons interested in a trust under a will are not only proper but necessary parties to an action to remove a trustee. The relevant statutory sections are in accord with the decision in Elias v. Schweyer, 13 App. Div. 336 ..."

Interestingly, on January 9th, 1976, the attorney for the petitioning legatee submitted an affirmation to the Surrogate's Court wherein he stated " 6. ...since Mr. Sassower has now filed his Account..."

The fact is that petitioner mailed his accounting

to the Surrogate's Court and to the attorney for the petitioning legatee three (3) months prior to the Order of March 9, 1976.

As further evidence that it was not the intention of the Surrogate's Court to remove the petitioner annexed is the decision of January 28, 1976 on which the Order of March 9, 1976 was based. Such decision makes no mention of the removal of the petitioner as executor.

As further evidence of the universal recognition of the petitioner as executor subsequent to March 9, 1976, annexed is a photocopy of a Certificate of Letters Testamentary to the petitioner on March 14, 1977 (more than one year after the Order of March 9th, 1976). On and subsequent to March 25, 1977, your deponent returned the original Certificates of Letters Testamentary to the Surrogate's Court as directed by the respondent and the clerk of the court.

Deponent does not accept the statement (Par. 21) that "respondent has not in any manner, directly or indirectly interfered with petitioner's request (with respect to the stenographic transcript of the proceedings). It is respectfully submitted that the proper administration of justice mandates that proper requests for minutes not be ignored. Had such minutes been available to the petitioner further facts could have been set forth herein in support of this application.

With respect to the First and Second Cause of Action, the Assistant Attorney General states that "no such"

Body Attachment or Order of Arrest was issued.

Such terse statement without any attempt at explanation is unacceptable to petitioner.

Freedom is more than a right not to be arrested illegally, it is and includes the right not to fear that illegal orders of arrest will not be issued or told they were issued.

Petitioner believes that he is entitled to a full and complete explanation of the events as they occurred in Surrogate's Court and the Sheriff's Office with respect to this incident.

Insofar as the Verified Answer may raise issues of fact, petitioner respectfully prays for a hearing in Nassau County.

This affidavit does not purport to be a complete response to all the matters set forth in the affidavit of LEONARD J. PUGATCH, Esq.

For reasons set forth orally by LEONARD J. PUGATCH, Esq., to your deponent, his affidavit as served did not contain copies of his exhibits. Deponent assumes that they will be subsequently furnished and makes no objection to such fact, reserving to petitioner the right to object to same in the event such exhibits are not correct copies, or are not the documents that deponent believes they will be.

WHEREFORE, your deponent respectfully prays that

the petition be granted in all respects.

Sworn to before me this
11th day of June, 1977.



RAYMOND GLEICHER
Notary Public, State of New York
No. 03-6541300
Qualified in Bronx County
Commission Expires March 30, 1978

~~SURROGATE'S COURT~~ : ~~SUFFOLK COUNTY~~

DECISION

Application for a Compulsory Accounting in
the Estate of

EUGENE PAUL KELLY,

Deceased.

By: HON. ERNEST L. SIGNORELLI, Surrogate

Dated..... January 28 19... 76

File # 736 P. 1972

MICROFILMED
MAR 9 1976
MERWIN S. WOODARD
CHIEF CLERK

Application to punish respondent for contempt and for his removal as executor is granted. The respondent has had ample time to comply with the order of this Court made March 27, 1975, directing respondent as Executor to file his account, together with petition for its judicial settlement.

Respondent may purge himself of contempt by complying with the terms of the aforesaid order within 30 days from service of a certified copy of the order to be entered hereon. Should respondent fail to comply with the order within the time allowed, petitioner may make application ex parte for issuance of a warrant of commitment.

Submit order accordingly.

Ernest L. Signorelli
Ernest L. Signorelli, Surrogate

Schacter, Abuza & Goldfarb, Esqs.

Attorneys for Petitioner
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New York, New York 10007

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

JAN 28 1976

MERWIN S. WOODARD
CHIEF CLERK

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